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DIGEST OF WATER POLLUTION CONTROL LEGISLATION ... ALASKA

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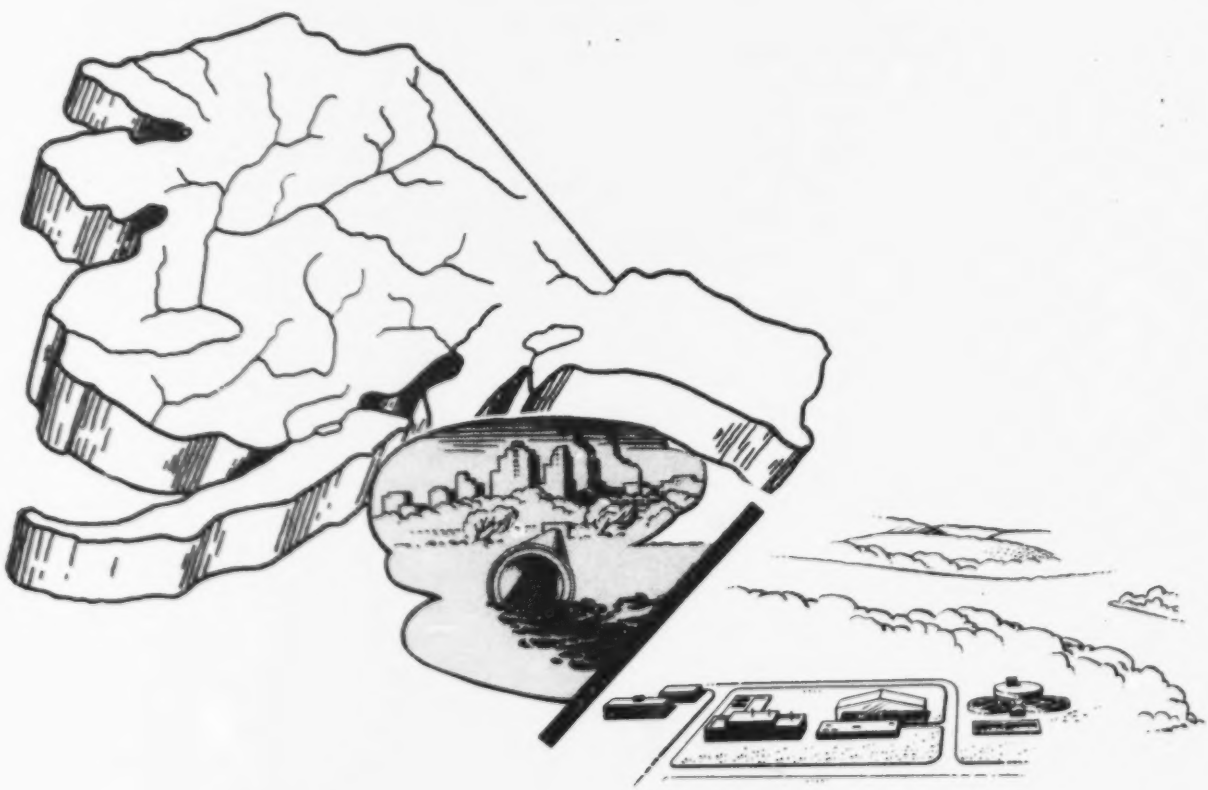

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U.S. DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE
Public Health Service

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Section 3 of the Federal Water Pollution Control Act (33 U.S.C. 466b) directs the Public Health Service to "encourage the enactment of improved and, so far as practicable, uniform State laws relating to the prevention and control of water pollution."

This Digest is one of a series prepared by the Public Health Service as a service to the States and others interested in these objectives. Cooperation of State officials in the preparation of these digests is gratefully acknowledged.

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DIGEST OF WATER POLLUTION CONTROL LEGISLATION OF ALASKA

I. GENERAL STATEMENT

In 1949 Alaska enacted a comprehensive water pollution control law, to be administered by the Water Pollution Control Board created within the Department of Health. The members of this Board are the members of the Board of Health. The Board is given jurisdiction to abate and prevent the pollution of the waters of the Territory (SLA, 1949, Ch. 117, secs. 4, 5). The Board appoints an Executive Secretary and an Administrator, who must actively administer a water pollution control program. The Executive Secretary must be the Commissioner of Health of Alaska, and the Administrator must be a member of the staff of the Department of Health (SLA, 1949, Ch. 117, sec. 4).

The Board of Health formulates general policies affecting the public health, and adopts and promulgates rules and regulations relating to and providing for, among other things, the prevention and control of public nuisances, sanitation and sanitary practices in the interest of public health, cooperation with local boards of health and health officers, protection of public water supplies, and standards for the collection and disposal of sewage and industrial waste (Sec. 40-1-6(a), ACLA 1949, and sec. 40-1-6(b), ACLA 1949, as amended by sec. 16, Ch. 118, SLA 1949, and sec.1, Ch. 56, SLA 1951). 1/

The Alaska Oil and Gas Conservation Commission is composed of the Governor, the Territorial Highway Engineer and the Commissioner of the Alaska Department of Mines (SLA, 1955, Ch. 40, sec. 3). The Commission is authorized among other things, to require the drilling, casing, and plugging of wells in such a manner as to prevent the intrusion of water into an oil

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1/ Citations in this digest hereafter refer to the Alaska Compiled Laws Annotated, 1949, unless otherwise noted.

or gas stratum, the pollution of fresh water supplies by oil, gas, or salt water, and to prevent blow-outs, cavings, seepages, and fires (SLA, 1955, Ch. 40, sec. 4.4(a)(3)). The Commission is further authorized to regulate for conservation purposes the drilling, producing, and plugging of wells, the disposal of salt water, nonpotable water and oil field wastes, and the contamination or waste of underground water (SLA, 1955, Ch. 40, sec. 4.4(b)(1),(4),(5)).

II. ADMINISTRATIVE ORGANIZATION

Water Pollution Control Board

1. Composition and Organization

The Water Pollution Control Board is within the Department of Health, and its members are the members of the Board of Health. The Board appoints an Executive Secretary who is the Commissioner of Health of Alaska. The Board also appoints an Administrator who must actively administer the water pollution control program. The Administrator must be a member of the staff of the Department of Health, trained and experienced in the field of sanitation, pollution abatement, and public health (SLA, 1949, Ch. 117, sec. 4(a),(b),(c),(d)).

2. Powers and Duties

a) Development of comprehensive program; Setting standards for limits of pollution and quality of waters

The Board is responsible for developing comprehensive plans for water pollution control in Alaska. In this connection, it conducts investigations and hearings and sets standards of pollution and of water purity (SLA, 1949, Ch. 117, sec. 5(a)(2),(7)). In establishing standards of quality of the waters it is recognized that due to variable factors, no single standard of quality and purity of the waters is applicable to all of the waters of the Terrtitory (SLA, 1949, Ch. 117, sec. 6).

b) Issuance of permits and review of plans

The Board reviews plans for sewage and industrial waste disposal and/or treatment for any industrial establishment, community, public or private property subdivision or development whether publicly or privately owned or operated and issues permits therefor. It is unlawful to construct, extend, install, or operate any sewage system or treatment works, or any part thereof until the plans for such works have been submitted to and approved by the Board, unless the Board waives such submission. It is unlawful for anyone to create any new or added pollution to any of the waters of the Territory (SIA, 1949, Ch. 117, secs. 5(a) (10)(7)). The Board also passes on permits for polluting or obstructing waters used by salmon in the propagation of the species (Sec. 39-2-31, 39-2-32, as amended by sec. 12, Ch. 117, SIA 1949).

c) Enforcement

After investigation, if it is the opinion of the Board that a person is polluting the waters of Alaska by a discharge therein, upon the certification of three or more members of the Board that it would be prejudicial to delay action, an emergency may be declared and the person responsible may be notified in writing that he must discontinue such discharge immediately. In other cases, if it appears after investigation that there has been a violation of any provisions of the Act or any regulations orders of the Board, the Board must give written notice to the alleged violator setting forth the act done or omitted to be done or claimed to be a violation and requiring that the matter complained of be satisfied, or that the alleged violator appear in person or by attorney before the Board or its duly designated agent, at a time and place in said notice specified and answer the charges complained of. After due con-

sideration of the testimony and arguments or on default in appearance, the Board issues its final order or determination and notifies the person in writing, personally, or by registered mail (SLA, 1949, Ch. 117, sec. 8). The Attorney General is authorized upon the request of the Board to bring an action for an injunction against persons violating the provisions of the Act or any order or determination of the Board. Upon such action for injunction, any finding of the Board made after hearing on due notice is considered prima facie evidence of the facts found therein. Persons wilfully violating any final determination or order of the Board promulgated pursuant to the Act are guilty of a misdemeanor (SLA, 1949, Ch. 117, secs. 9, 10).

d) Cooperation with other public and private agencies

The Board is empowered to cooperate with other Territorial departments, state officers, with municipalities, with other states, with the United States, the Dominion of Canada or any province thereof, with industries, corporations, and individuals to the end of protecting and freeing the waters of the Territory from pollution (SLA, 1949, Ch. 117, sec. 5(b)). The Board serves as the agency of the Territory for the receipt of moneys from the Federal Government or other public or private agencies. (SLA,1949, Ch. 117, sec. 5(a) (9)).

e) Administrative powers

The Board is authorized to promulgate and adopt regulations, hold hearings, administer oaths, and issue orders (SLA, 1949, Ch. 117, sec. 4(g)). The Board or its duly appointed agent has the right to enter at all reasonable times in or upon any property, public or private, for the purpose of inspecting and investigating conditions relating to pollution (SLA, 1949, Ch. 117, sec. 5(c)). The Board has the power to compel the attendance of

witnesses, make findings of fact and determinations. After public hearing, the Board has the power to make orders requiring the discontinuance of the discharge of sewage, industrial waste, or other wastes into any of the waters of the Territory resulting in pollution in excess of the applicable standards established by the Board, and to specify the conditions and the time within which such discontinuance must be accomplished. The Board may institute or cause to be instituted in a court of competent jurisdiction legal proceedings to compel compliance with the provisions of the Act or the determinations and orders of the Board (SLA, 1949, Ch. 117, secs. 5(a)(1), (3), (4), (5)).

Public notice must be given of hearings which are required to be held before any standards of quality for any waters are established by the Board (SLA, 1949, Ch. 117, sec. 5(a)(1),(2)).

3. Exemptions from operation of Act

Industrial wastes from gravel washing plants and placer mining operations are not considered pollution within the meaning of the Act (SLA, 1949, Ch. 117, sec. 2(d),(f)).

4. Preservation of existing rights and remedies

Nothing contained in the Act is to be construed to postpone, stay, or abrogate the enforcement of the provisions of the Alaska Health and Safety Code in respect to nuisances (SLA, 1949, Ch. 117, sec. 12).

5. Statement of policy; Severability clause

It is the public policy of the Territory of Alaska to maintain standards of purity of the waters of the Territory consistent with public health and public enjoyment thereof, the propagation and protection of fish and wildlife, including birds, mammals and other terrestrial and aquatic life, and the industrial development of the Territory, and to that end

require the use of all known available and reasonable methods to prevent and control the pollution of the waters of the Territory (SLA, 1949, Ch. 117, sec. 3).

The Act contains a severability clause (SLA, 1949, Ch. 117, sec. 11).

III. BOARD OF HEALTH

A. Composition

The Board of Health is within the Department of Health and consists of five members, one from each Judicial Division of the Territory, and one at large, one of whom must be a member of the Alaska Territorial Medical Association at the time of his appointment. All members are appointed by the Governor. The Board elects its own Chairman (Sec. 40-1-3, as amended by sec. 1, Ch. 4, SLA 1951). The Board must hold at least one regular meeting annually and such special meetings as may be called by the Chairman upon the request of two members (Sec. 40-1-7).

B. Powers and Duties

1. General authority

The Board of Health formulates general policies affecting the public health. It appoints a Commissioner of Health and advises him in the performance of his duties. The Commissioner administers the laws, rules and regulations relating to health and sanitation. The Board also adopts specific rules and regulations for the prevention and control of public nuisances and for the control of public water supplies and standards for the collection and disposal of sewage and industrial wastes (Secs. 40-1-5, 40-1-6(a), 40-1-6(b), as amended by sec. 16, Ch. 118, SLA 1949, and sec. 1, Ch. 56, SLA 1951).

2. Enforcement

Violations of the Act or of any rule or regulation promulgated thereunder is a misdemeanor and upon conviction is punishable by a fine of not more then $500 or imprisonment for not more than one year, and each day that the violation continues is deemed a separate offense (Sec. 40-1-6(c)).

3. Cooperation with other agencies

The Board is directed to cooperate with the Federal Government in matters pertaining to the public health (Sec. 40-1-6(a)).

4. Administrative powers

The Board is authorized to hold hearings and subpoena witnesses and documents and any member of the Board has power to administer oaths in connection with duties of the Board (Sec. 40-1-6(a)).

IV. MISCELLANEOUS PROVISIONS OF ALASKA STATUTES RELATING TO WATER POLLUTION

Anyone who puts any dead animal carcass, or part thereof, excrement, putrid, nauseous, noisome, decaying, deleterious, or offensive substance into, or in any other manner befouls, pollutes, or impairs the quality of any spring, brook, creek, branch, well, or pond of water which is or may be used for domestic purposes, and anyone who places or allows the placing upon any lot, street, beach, premises, or upon, or within two hundred feet of, any public highway (unless such highway abuts upon tidal waters) any garbage, offal, animals, or any other thing which is obnoxious or causes the spread of disease or in any way endangers the health of the community, is considered as creating or maintaining a nuisance; and anyone who neglects or refuses to abate such nuisance upon order of any health officer is guilty of a misdemeanor and is punishable by a fine or imprisonment or both (Secs. 40-9-2, 40-9-3).

It is unlawful for anyone to obstruct, divert, or pollute any of the waters of the Territory, either fresh or salt, utilized by salmon in the propagation of the species, by felling trees or timber therein, casting, passing, throwing, or dumping therein, any tree limbs or foliage thereof, underbrush, stumps, rubbish, earth, stones, rock or other debris or any sawdust, shavings, or other waste or refuse of any kind, or to erect any dam, barricade or obstruction of any kind to retard, conserve, impound or divert any such waters, so as to prevent or interfere with the free ingress or egress of salmon into such waters in the natural spawning or propagation process, or to render such waters inaccessible or uninhabitable for such fish for that purpose without first making application therefor and obtaining a permit or license from the Water Pollution Control Board. Violation of this section is a misdemeanor punishable by a fine of not less than $100 nor more than $500 (Secs. 39-2-21, 39-2-32, as amended by sec. 12, Ch. 117, SLA 1949).

The dumping of mine tailings into the sea where they actually obstruct navigation or impair the fisheries is prophibited (Sec. 47-3-21).

It is unlawful to excavate or fill or in any manner alter or modify the course, location, condition or capacity of, any port, roadstead, haven, harbor, canal, lake, harbor of refuge, or inclosure within the limits of any breakwater, or of the channel of any navigable water of the United States, unless the work has been recommended by the Chief of Engineers and authorized by the Secretary of the Army prior to beginning the same. Violation is a misdemeanor, punishable by a fine or imprisonment (Secs. 46-2-2, 46-2-3).

It is unlawful to discharge ballast of any vessel into the navigable portions or channels of any bays, harbors, or rivers of the Territory or within the jurisdiction of the Territory, so as to injuriously affect such portions

or channels of such bays, harbors, or rivers, or to obstruct the navigation thereof. Violation is punishable by a fine or imprisonment (Sec. 65-14-1).

Whenever by any law relating to the Territory an act is declared to be a misdemeanor, and no punishment is prescribed therefor, the person committing the same, upon conviction, is punishable by a fine or imprisonment (Sec. 65-2-4).